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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 TRACY VAUGHN PAUL, II,  
12 Petitioner,

13 v.

14 KELLY HARRINGTON,  
15 Warden,  
16 Respondent.

Case No. CV 10-0071 JVS (JCG)

**ORDER ACCEPTING FINDINGS,  
CONCLUSIONS AND  
RECOMMENDATIONS OF UNITED  
STATES MAGISTRATE JUDGE AND  
DENYING CERTIFICATE OF  
APPEALABILITY**

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18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all of the  
19 records herein, the Report and Recommendation of the United States Magistrate  
20 Judge, and Petitioner's "Petition for Rehearing Suggestion for Rehearing En Banc,"  
21 which the Court construes as Petitioner's Objections to the Report and  
22 Recommendation, and has made a *de novo* determination. The Court accepts the  
23 Magistrate Judge's Report and Recommendation.

24 In his Objections, Petitioner essentially restates the arguments made in  
25 support of ground one of the Petition. Those arguments lack merit for the reasons  
26 stated in the Report and Recommendation. To the extent that Petitioner's  
27 Objections include a request for an evidentiary hearing, Petitioner's request is  
28 denied as an evidentiary hearing is not required in this case. *See Cullen v.*

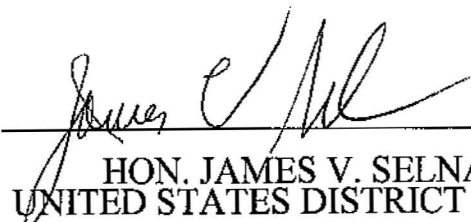
1 *Pinholster*, 131 S.Ct. 1388, 1398 (2011); *Schriro v. Landrigan*, 550 U.S. 465, 474  
2 (2007) (“[I]f the record refutes the applicant’s factual allegations or otherwise  
3 precludes habeas relief, a district court is not required to hold an evidentiary  
4 hearing.”).

5 Additionally, for the reasons stated in the Report and Recommendation, the  
6 Court finds that Petitioner has not made a substantial showing of the denial of a  
7 constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v.*  
8 *Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate  
9 of appealability.

10 Accordingly, having made a *de novo* determination of those portions of the  
11 Report and Recommendation to which objection was made, IT IS ORDERED  
12 THAT:

- 13 1. Petitioner’s request for an evidentiary hearing is denied.
- 14 2. Judgment shall be entered dismissing the action with prejudice.
- 15 3. The Clerk shall serve copies of this Order and the Judgment herein on  
16 the parties.
- 17 4. A Certificate of Appealability is denied.

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20 DATED: 9.29.11

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22 HON. JAMES V. SELNA  
23 UNITED STATES DISTRICT JUDGE  
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